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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1084

EULARIA M. GATEWOOD, Owner of the Motor Vessel "Lillian Anne,"

Petitioner,

vs.

W. S. SANDERS, Owner of the Motor Tug "Fairwill," and THE R. C. HUFFMAN CONSTRUCTION COMPANY, Owner of the Scow No. 72-H.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

Leon T. Seawell,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Brief in support of petition	9
There was no competent person in charge of the tug	12
Those on the tug did not see the Lillian Anne until it was too late to avoid a collision	14
The tug disregarded the rules of navigation	18
If it is a crossing case, the tug was again at fault	20
There was no lookout on tug or scow	23
The scow was improperly lighted, if at all	25
There was a duty on the tug to blow danger signals and to go astern sooner than she did	28
There was no negligence in the navigation of the Lillian Anne	29
This is an important maritime question of local application conflicting seriously with applicable decisions	29
The decision as it now stands has so far departed from the accepted and usual course of judicial procedure as to call for the exercise of this Court's power of supervision	31
Conclusion	32

Authorities Cited

The Inland, 45 Fed. Sup. 265, 1942 A. M. C. 1007	14
The Pennsylvania, 86 U. S. 125	20, 30
The Haven Belle and *The Seminole*, 85 Fed. (2d) 939	23
N. Y. P. and N. Ry. v. *Wilkins*, 248 Fed., Aff: 25 Fed. 42	24, 31
Lehigh Valley R. R. Co. v. *N. Y. Central, etc.*, 1928 A. M. C., p. 1875	25
Reliable Fuel Supply Co. v. *Palmer, et al.*, 1940 A. M. C., p. 847	25

Page

Elmshearst v. *Sacony*, 123, 1935 A. M. C., p. 275, 10 Fed. Supp. 341 27
The San Clemente-Carolinian, 1941 A. M. C., 1101 .. 28
The Lady Lu-Harolmi III, 1944 A. M. S., 650; 138 Fed. Supp. 309 28
The Exeter-Trim, 1940 A. M. C., 91; 30 Fed. Supp. 283 28
The Pilot Rules, Articles 18, 19, 22, 23 31

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Eularia M. Gatewood, as owner of the Motor Vessel LILLIAN ANN, Petitioner, respectfully shows to this Honorable Court as follows:

The above entitled cause was a proceeding in the District Court of the United States for the Eastern District of Virginia, at Norfolk, by The R. C. Huffman Construction Company, a corporation, owner of the Scow No. 72-H against this petitioner and the Motor Tug Fairwill, owned by W. S. Sanders.

The District Court rendered an opinion wherein it found the Motor Vessel LILLIAN ANNE solely at fault, and from this decision both Eularia M. Gatewood and The R. C. Huffman Construction Company appealed to the Circuit Court of Appeals for the Fourth Circuit. The case was argued and submitted, whereupon the Circuit Court of Appeals rendered an opinion affirming the decree of the District Court on December 24, 1945. Petitions for rehearing were filed but a rehearing was denied by order entered February 5, 1946, and this petition is now presented seeking a writ to review the decision. A transcript of the record is herewith filed.

The petitioner having asked for a stay of the mandate in order to afford her the opportunity to apply to this Honorable Court for a writ of certiorari, an order was entered on March 9, 1946, granting such stay to and including April 9, 1946.

The merits of the legal questions in this case will be discussed in the brief herewith filed in support of this petition. No attempt will be made to elaborate upon them in this petition. We shall point out the reasons why we contend that this is a case in which a writ of certiorari should be issued by the Supreme Court.

The chief reason is that the judgment of the Circuit Court of Appeals constitutes a decision of an important maritime question of local application conflicting seriously with applicable decisions.

The proceeding arises out of a collision which occurred in the harbor of Norfolk, Virginia, on the early morning of November 5, 1942, between the Motor Vessel LILLIAN ANNE and the Scow No. 72-H while in tow of the Tug FAIRWILL. The location of the collision was in the intersection of the Eastern Branch of the Elizabeth River and the main channel of the Elizabeth River at a point about opposite what is known as the Chesapeake Steamship Dock.

The LILLIAN ANNE was owned by Mrs. Eularia M. Gatewood and is a motor vessel 141.5 feet long, 26.1 feet beam and 10.3 deep. At the time of the collision she was bound out from the Norfolk Navy Yard, which is located on the Southern Branch of the Elizabeth River, with 263 enlisted men and officers aboard destined for Solomon's, Maryland. In the pilot house were Captain R. W. Gatewood, who was looking out, and Captain J. S. Martin, mate of the vessel, who was attending to the steering.

The tug FAIRWILL is a diesel motor tug 58.6 feet long, 17.4 feet beam and 8.3 feet deep and was owned and operated by W. S. Sanders. She was doing towing work for the Huffman Construction Company and had the Huffman scow 72-H alongside.

The scow 72-H is a wooden, flat deck, square end, dump scow, 120 feet long, 35.3 feet wide and 13.5 feet deep, with a coaming 2 feet high extending around the openings on the scow. She was being operated by the R. C. Huffman Construction Company in the work of taking mud, which was being dredged in the upper regions of the Eastern Branch of the Elizabeth River, to a dumping ground near Craney Island. At the time of the collision the scow was light and was being returned from the dumping ground to her dredge.

The tug FAIRWILL was tied up along the starboard quarter of the scow with the stern of the tug extending some 15 feet beyond the stern of the scow and the scow extending approximately 70 feet ahead of the tug. There was no lookout whatever either on the forward end of the tug or on the forward end of the scow. The tug was carrying its regulation towing lights and the LILLIAN ANNE was also carrying her proper lights. Libellant, the R. C. Huffman Construction Company, contends that there were two white lanterns on the scow, one on the forward end being placed on the deck of the scow immediately at the

bottom and against the 2 foot high coaming. The other light they claim to have been on the top of a pump house located aft on the scow and about in the center. The witnesses from the LILLIAN ANNE deny the presence of any lights on the scow.

The course of the LILLIAN ANNE was in a general northerly direction, while the course of the tug and scow was in a general southerly direction when the tug was first observed by the LILLIAN ANNE. At that time both red and green lights of the tug were seen by the navigators of the LILLIAN ANNE at a distance of 800 yards. This indicating a meeting head-on, or nearly so, the LILLIAN ANNE gave a signal of one blast and directed her course to starboard in order to carry out a port to port passage as is required under the rule. Those on the LILLIAN ANNE heard no response from the tug to their signal, but they continued to watch the lights of the tug, and then the tug turned to her port, shutting out her red light and showing only her green. Immediately upon observing this the master of the LILLIAN ANNE ordered his engines full speed astern and blew a signal of three blasts to indicate that fact. No signal was heard from the tug until the vessels were within a few feet of one another, when the tug gave a blast of three signals indicating reversed engines upon her part and immediately the LILLIAN ANNE answered by repeating her backing signals. In spite of the reversed engines the bow of the LILLIAN ANNE came in contact with the forward end of the scow, damaging the scow but doing no damage to the LILLIAN ANNE. Immediately after the collision the master and a deck hand of the LILLIAN ANNE went below to ascertain if there was any damage to the motor vessel, and after a diligent search and finding no damage, and as the tug and scow were then headed up the Eastern Branch, the LILLIAN ANNE proceeded. This action took about ten minutes.

At the trial of the case in the District Court the District Judge found that the collision was caused solely by the negligence of the navigators of the LILLIAN ANNE and exonerated those in charge of the Tug FAIRWILL and the Scow in spite of the admissions of fault made by the mate of the tug who was in charge of her navigation at the time.

There was no dispute of fact on the question of the negligence of the Tug FAIRWILL and we printed the evidence in full of the mate of that tug together with excerpts from the remainder of the tug's crew, and asked the court to accept that evidence and apply the rules of navigation and of admiralty law to it. The Circuit Court of Appeals, however, failed to do this, resolving the matter merely by accepting certain findings of fact of the District Court and failing to consider the actual evidence from the tug in which the confessions of fault were made.

These points of negligence which we say constitute the prime reasons for the collision will be pointed out in the brief hereto appended.

The second reason for making this application for a writ is that the decision as it now stands has so far departed from the accepted and usual course of judicial procedure or has so far sanctioned such a departure by the lower court as to call for an exercise of this Court's power of supervision.

In arriving at its conclusions the court has ignored the course of proceeding as laid down by this Supreme Court and by other courts of distinction so that this case stands out as an exception to the general practice of the maritime law and without any adequate reason to support it. This failure to abide by well founded principles of admiralty law tends to create an unnecessary confusion and certainly results in an injustice in the particular case.

The jurisdiction of this Court is invoked under Rule 38 of the Supreme Court General Rules which is founded upon Section 240-A of the Judicial Code as Amended by the Act of February 13, 1925. The judgment of the Circuit Court of Appeals was entered on December 24, 1945, petition for rehearing was denied February 5, 1946, and the mandate has been stayed until and including April 9, 1946. This petition for a writ of certiorari is filed April 8, 1946.

WHEREFORE upon due consideration of this petition and the annexed brief and the certified copy of the record of the Circuit Court of Appeals for the Fourth Circuit filed herewith the respondent and petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Fourth Circuit commanding that Court to certify and send to this Court a full and complete transcript of the record of all proceedings had in this cause to the end that the same may be reviewed and determined by this Honorable Court. And petitioner prays that upon the final consideration of this cause the said judgment of the said Circuit Court of Appeals be reversed by this Honorable Court, that the judgment of the United States District Court be reversed, and a judgment rendered in favor of the respondent, Eularia M. Gatewood.

Petitioner further prays for such other equitable and general relief as may pertain to this case and as may be competent for this Honorable Court to grant.

LEON T. SEAWELL,
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Norfolk, Virginia.

STATE OF VIRGINIA,
City of Norfolk, to-wit:

Before me, G. A. Bragg, a Notary Public, personally appeared Leon T. Seawell, who being duly sworn deposes and says that he is a member of the Bar of the Supreme Court of the United States and is proctor for the petitioner herein; that he has read the foregoing application for a writ of certiorari; and that all the facts therein stated are true and correct to the best of his knowledge and belief.

LEON T. SEAWELL.

Subscribed and sworn to before me this 5th day of April, 1946.

G. A. BRAGG,
Notary Public.

(Seal.)